

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

IN RE ST. JUDE MEDICAL, INC., :
SILZONE HEART VALVES PRODUCTS :
LIABILITY LITIGATION : MDL DOCKET NO. 1396

JOINT STATUS CONFERENCE REPORT

(May 14, 2002 Status Conference)

The parties have met and conferred and submit the following status report to the Court.

1. STATUS OF CLASS CERTIFICATION MOTION

Plaintiffs filed and served their motion for class certification, including supporting Memorandum of Law and Appendix, on May 3, 2002. Pursuant to Pre-Trial Order No. 15, St. Jude Medical's Memorandum of Law in Opposition to Class Certification is due on June 17, 2002 and Plaintiffs' Reply Memorandum is due on July 8, 2002. The hearing on the class certification motion is currently scheduled for July 25, 2002, at 1:30 p.m.

The parties have agreed that class discovery is now closed and that no depositions shall be taken of witnesses who will give testimony by affidavit at the class certification hearing.

2. STATUS OF MERITS DISCOVERY PLAN

The parties have met and conferred repeatedly concerning a proposed merits discovery Order in an effort to narrow the issues. The parties have reached agreement with respect to most

of the points of such an order and have jointly submitted their Proposed Merits Discovery Order to the

Court. The remaining areas of disagreement between the parties concerning such order are set forth and explained in more detail in the margin of the Proposed Order itself. In summary, the parties have been unable to agree concerning whether or not deposition exhibits should have to be produced by the taking party to the deponent's counsel in advance of the deposition. Plaintiffs oppose any such requirement and St. Jude Medical favors requiring all exhibits to be disclosed at least 10 days prior to deposition.

3. STATUS OF ST. JUDE MEDICAL'S PREEMPTION MOTION

Defendants intend to serve a Motion for summary judgment on preemption grounds on or before June 7, 2002. Plaintiffs believe that there is authority prohibiting the early filing of the motion and in addition PTO 1 requires leave of Court before the Motion may be filed. Plaintiffs also believe that St. Jude Medical's preemption Motion should not be considered by the Court prior to the completion of merits discovery. St. Jude Medical disagrees and submits that no authority requires delay of the determination of the preemption defense until the close of merits discovery.

4. STATUS OF OTHER PENDING DISCOVERY

A. Depositions

Two depositions were previously noticed by state court attorneys for plaintiffs' in the matter of *Bridges v. St Jude Medical, Inc.*, a state court action pending in Greenville County, South Carolina. Dr. Gary Grunkemeier, a biostatistician, whose deposition was previously set for April 12, 2002, will now be deposed on May 30 and 31, 2002, in Portland, Oregon. The

deposition of Dr. Jagdish Butany, a Canadian pathologist, went forward in the *Bridges* case on Friday, April 26, but has not been completed. The parties have agreed that MDL Plaintiffs will have the opportunity to depose Dr. Butany separately on a date after the completion of the state deposition. Dr. Butany has advised St. Jude Medical that before he will voluntarily appear for a deposition in the MDL, MDL plaintiffs' counsel will have to come to an agreement with Dr. Butany's counsel concerning the confidentiality of his documents.

B. Status of FDA Subpoena Document Production

To date, Plaintiffs have received from St. Jude Medical 4 CD-ROMS (labeled FDA 1-4) containing documents produced by the FDA. After St. Jude Medical provided Plaintiffs with a log in accordance with Pretrial Order No. 9, it came to the attention of Plaintiffs that certain documents produced by the FDA to St. Jude Medical were not forwarded to Plaintiffs. St. Jude Medical contends that some FDA documents were withheld because they were unrelated to a Silzone product or a Silzone predecessor product, or they were privileged FDA internal correspondence which had been inadvertently produced by FDA.

As St. Jude Medical's counsel advised this Court at the last Status Conference, after St. Jude Medical notified FDA that privileged internal correspondence may have been inadvertently produced, FDA requested St. Jude Medical to withhold such correspondence until it could determine whether it wished to assert a privilege over these documents. St. Jude Medical's counsel will advise the Court of the status of the FDA production and the FDA's position with regard to the production of internal correspondence at the Status Conference.

Plaintiffs' position with respect to the purported "inadvertently produced" documents, is that they should be produced immediately. Plaintiffs received no notice from the FDA that

anything was inadvertently produced and the FDA is well aware of the origin of the subpoena. Absent a timely and proper claim by the FDA, Plaintiffs' position is that all FDA documents should be turned over immediately. Plaintiffs also maintain that by not identifying the nature of the document and by not making it timely known that there was any issue of claimed inadvertent production, the FDA has waived any such claim by not making it timely known and providing the basis for contention. Plaintiffs contend that St. Jude Medical has no standing to assert an FDA privilege and that it is inappropriate for St. Jude Medical to attempt to withhold documents that have already been produced by the FDA on this basis.

The parties believe that additional documents will be produced by the FDA, however, the exact date of delivery is unknown.

5. STATUS OF PRETRIAL ORDERS

A. Merits Discovery Order

As noted, the parties have jointly submitted a Proposed Merits Discovery Order; the areas where the parties still disagree are few and are set forth and explained in the margin of the Proposed Merits Discovery Order.

A. Order Concerning Former Patient Contacts

St. Jude Medical has not yet responded to the Court's suggestion that a neutral be named in connection with the proposed pre-trial order concerning explanted valve retrieval and related contacts with patients.

6. CASE STATUS REPORT

St. Jude Medical's most recent report on federal and state court filings was forwarded to the Court by electronic mail on May 6, 2002.

7. PLAINTIFFS' STATE LIAISON COMMITTEE

Plaintiffs' State Liaison Counsel, Patrick Murphy, has prepared and will submit for the Court's consideration a draft letter for the Court's use in contacting the state court judges before whom related state court Silzone litigation is pending, for the purpose of suggesting possible state-federal coordination steps. Mr. Murphy will provide a draft of this proposed letter to St. Jude Medical's counsel for review and input prior to submitting the same to the Court.

8. MOTIONS BY SPIRE CORPORATION AND DR. WIRTH

Also on the Court's calendar for this Status Conference are motions pertaining to the case of *Stanton v. St. Jude Medical, Inc., Spire Biomedical, Inc., a/k/a Spire Corporation, Dr. Donald Wirth and Family Practice of Grand Island, P.C.*, a consolidated case herein which originated in the U.S. District Court for the District of Nebraska. Specifically, the Court has been asked to consider the motions of Spire Corporation for dismissal and remand and the motion of Dr. Wirth for dismissal. These motions are opposed by plaintiff Stanton.

DATED:

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